IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.375 of 2000

Reserved on: 20-09-2007

Date of decision: **1.10.2007**

Deep Singh. Petitioner

Versus

Union of India and others. Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice *V.K. Ahuja, J.*

Whether approved for reporting[1]*?*

For the petitioners: Mr.Onkar Jairath, Advocate.

For the respondents: Mr. Ravinder Thakur, Central Government Standing Counsel.

Per V.K.Ahuja.

This Judgment shall dispose of the Writ Petition filed by the petitioner under Articles 226/227 against the order passed by the respondents dismissing the petitioner from services w.e.f. 2.6.1999.

Brief facts of the case are that the petitioner was appointed as a Constable in BSF on 9.5.1989. On 12.5.1999, the petitioner was detailed on duly to BOP Moraghati in West Bengal and at about 0800 hours he was on duty along with other Constables. During his duties one villager named Rissudin came with an axe to plough his fields ahead of border road and the petitioner told the

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[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

said villager that he has no instructions to allow any villager to go ahead of O.P.No.3. On this, the villager threatened to lodge a false complaint against the petitioner and made a false complaint to his Headquarter that the petitioner has allowed three civilians to cross the border along with three pairs of cattle. The Dy. Commandant thereafter visited the spot and enquired about the smuggling of three pairs of cattle from India to Bangladesh border. The petitioner was also asked about the incident. The proceedings were started against the petitioner and the Security Force Court recorded evidence and after recording of the evidence, the petitioner was called to defend himself and was given time to arrange a defence counsel and the Court after conducing of the proceedings, passed the major penalty of dismissal from service of the petitioner on 1.6.1989.

The petitioner appealed to the appellate authority i.e. respondent No.2 on 30.6.1989 which was also rejected on that day. The order of dismissal as well as the order of rejection of the appeal were challenged by the petitioner on the ground that the orders passed were arbitrary, violative of the provisions of Constitution of India and the charges against the petitioner were not proved. The orders were challenged on various grounds that the order of dismissal was imposed for not good and sufficient reasons and the order passed is not commensurate with the gravity of offence alleged to have been committed. It was also submitted that the order of dismissal was passed by the Court in a cursory and mechanical manner without assigning any reasons as required by the rules.

Reply was filed by the respondents who have supported both the orders passed by them. We have heard the learned counsel for the parties and have also gone through the record.

The petitioner had been tried under the provisions of Border Security Act, 1968 and the Rules framed thereunder. The petitioner is alleged to have committed an offence under Section 40 of the BSF Act i.e. to say 'an act prejudicial to good order and discipline of the force'. The first plea taken by the learned counsel for the petitioner during the course of arguments was that in the impugned order of dismissal passed by Security Force Court , no reasons have been given for coming to the conclusion of 'guilty' as against the petitioner. According to Rule 99 of Border Security force Act, 1961, while giving a finding on every charge finding of guilty or not guilty has to be given by the Court. There is nothing in these Rules that the reasons have to be given by the Court trying the offender,. However, during the course of arguments, it was submitted by the learned counsel for the petitioner that the rules have been amended and the recording of reasons is a must in view of the amendment of these rules. The learned counsel for the petitioner was not able to produce when the original rules were as amended. However, these amended rules were taken from the internet and according to these rules, amendments were made w.e.f.9.7.2003 wherein the following amendments was made as under:

> "After recording the finding on each charge, the Court shall give brief reasons in support thereof. The Law Officer or, if there is none, the Presiding Officer shall record or cause to be recorded such brief reasons in the proceedings."

It is therefore clear that the requirement of recording of reasons is there w.e.f.9.7.2003 but the order of dismissal was passed against the petitioner on 2.6,1999 when it was not mandatory to record reasons and therefore, no illegality can be found in the order of dismissal passed by the respondents.

However, in regard to the recording of reasons by the Appellate Authority, it was submitted that the recording of reasons by the Appellate Authority was must and since the Appellate Authority had not given any reasons and simply dismissed the appeal and therefore, the orders passed by the respondents are liable to be set aside. To substantiate his point, the learned counsel for the petitioner has relied upon two decisions of the Delhi High Court. In ***Hans Raj vs. Union of India and others*** 2006(4)SLR 566 it was observed that under the amended provisions of the Act and Rules, a convict is entitled to appeal to the appellate authority. The appellate authority is bound to give clear and categorical reasons in support of its orders on appeal. In the absence of reasons writ court cannot ascertain as to on what basis the order has been passed and amounts to violation of the principles of natural justice. The matter was remitted back to the appellate authority for decision afresh.

A reference was made to Section 117 of BSF Act in this regard. Reference was also made to another decision of Delhi High Court in ***Karan Singh vs. Union of Indian and others*** 2006(1) SLR 698 wherein it was observed that the appeal filed by the petitioner was dismissed in a casual manner and a reference was made to Section 117 of Border Security Force providing for

appeal to the competent authority and it was held that since the appeal was dismissed in a casual manner, the impugned order of dismissal of appeal was passed without application of mind, therefore, the respondents were directed to pass a reasoned order.

A perusal of BSF Act, 1968 shows that Section 117 provides for an appeal against the order passed by Security Force Act. There is also a provision under clause(2) for further petition to the Central Government, Director General or any prescribed officer who may pass such order thereon as it thinks fit. It is clear from the assertions made by the petitioner in the writ petition that no further appeal was filed against the order passed by the appellate authority under clause(1) of Section 117 and no appeal was preferred under clause(2) against the order passed by the Appellate Authority. The petitioner did not avail the remedy prescribed under Section 117(2) of the Act but filed the present writ petition. Our attention has not been drawn to any rules framed under Border Security Force Rules similar to Rule 99 which provide for recording of reasons now as discussed above in case of finding of guilty or not guilty by Security Force Court. Thus, it is clear that there are no rules prescribed that the Appellate Authority under Section 117(1) of the Act has to record any reasons similar to the provisions under Rule 99. However, the learned counsel for the petitioner had referred to the general principle of Rules of natural justice and has relied upon the decisions of Delhi High Court in two cases(supra) in which a reference was made to various decisions of the Apex Court in connected matters and finally it was concluded that the respondents ought to have passed a reasoned order and

the appeal was sent back for recording of the reasons by the Appellate Authority.

In the present case, a non-speaking order was passed by the Appellate Authority on 22.11.1999. The appeal was dismissed without giving any reasons. Applying the decisions of the Delhi High Court in the above two cases, the case is remanded back to the Appellate Authority which shall hear the petitioner and shall pass a reasoned order on the appeal filed by the petitioner. In view of the fact that the order was passed long back, the Appellate Authority is directed to dispose of the appeal as early as possible and in any event not later than 31st December, 2007.

The writ petition is allowed to the above extent only. There will be no order as to costs.

(Deepak Gupta),
Judge

Ist Oct., 2007 **(V.K. Ahuja),J.**
(SDS)